

## **B-1002-1. FILING REQUIREMENTS TO COMMENCE A VOLUNTARY CASE**

### **(b) Emergency Filing; Minimum Required**

Failure to submit the above required items at the time of filing or within ~~three (3)~~ **seven (7)** days thereafter may result in dismissal of the case pursuant to S.D. Ind. B-1017-1(b). Any request for an extension of time to file the other documents required by this rule must comply with Fed.R.Bankr.P. 1007.

#### Comments

The Judges decided to change all three-day deadlines to seven days.

## **B-1017-1. CONVERSION AND DISMISSAL**

### **(b) Dismissal for Failure to File Required Documents or Pay Filing Fee**

- (2) The Court shall also enter an order of dismissal without further notice or hearing unless the documents required by Fed.R.Bankr.P. 1007(b)(3) (credit counseling documentation or request for waiver under 11 U.S.C. §109(h)(4)) and by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form B21) are filed with the voluntary petition or within ~~three (3)~~ **seven (7)** days thereafter.
- (3) In any case where the filing fee has not been paid at the time of filing or within ~~three (3)~~ **seven (7)** days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless an application to pay the filing fee in installments, or, if a Chapter 7, an application to waive the filing fee, has been filed prior to the expiration of the period. If a Debtor fails to pay a fee installment when due, the Court shall dismiss the case without further notice or hearing.
- (4) In any case where creditor information has not been provided at the time of filing or within ~~three (3)~~ **seven (7)** days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.

#### Comments

The Judges decided to change all three-day deadlines to seven days.

## **B-2003-1. NOTICE OF CONTINUED MEETING OF CREDITORS**

### (a) Notice When Meeting Continued Before Convened.

A Debtor's request to continue a meeting of creditors should be directed to the trustee in a Chapter 7, 12, or 13 case, and to the UST in a Chapter 11 case. The request should not be filed with the Court. The Debtor shall seek a continuance when the cause necessitating the continuance becomes known to the Debtor. When the continuance is sought before the meeting has been convened, and the trustee grants the request, **the trustee shall file notice of the continued meeting date.** The Debtor shall send notice of the continued meeting to all creditors, parties in interest, the trustee and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2. If a trustee continues a meeting before it has been convened, then the trustee shall **file notice of the continued meeting date,** send notice of the continued meeting to all creditors, parties in interest and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2.

### Comments

Amendments to Fed.R.Bankr.P. 2003, effective December 1<sup>st</sup>, 2011, impose on the trustee an obligation to file notice of any continued meeting date.

## **B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES**

### (a) Employment Applications Generally

~~In a Chapter 11 case~~ **Any** person (the "Applicant") seeking Court approval of the employment of a professional person (the "Professional") pursuant to 11 U.S.C. §§327, 1103(a) or 1114 shall file with the Court an application and a supporting affidavit or verified statement of the professional complying with Fed.R.Bankr.P. 2014 (an "Employment Application"), and a proposed order on the Employment Application. **The Employment Application shall describe the proposed terms of employment. If employment is to be at an hourly rate, the proposed hourly rates of all Professionals who will work on the case shall be provided. If employment is on a contingent fee basis, the percentages and triggering events shall be disclosed.** Promptly after discovering any additional material information relating to such employment (such as additional potential or actual conflicts of interest) the Applicant and Professional shall file and serve a supplemental affidavit disclosing the additional information.

### (b) Employment Applications in Chapter 11 Cases

(i) Service of Notice and Hearing

The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be served on the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must, on or before the objection deadline provided in the notice, file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline the Court may grant the Employment Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

~~(e)~~ (ii) Conflicts

If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client, the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest (“waivers”) shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

~~(d)~~ (iii) Disclosure of Compensation and Retainers

As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval from the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional’s fees and expenses. Those financial arrangements may include provisions similar to the following:

- (1) The retainer shall be applied to satisfy the Professional’s fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§330 and 331;
- (2) The Professional may hold the entire retainer without any application for payment of fees and expenses until final approval by the Court of such Professional’s final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (3) Pursuant to subparagraph (e) of this Rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and
- (4) Any other arrangement approved by the Court.

(e) ~~(iv)~~ Periodic Payment Procedure

Subject to prior Court approval, the Professional and the Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. "Payment" includes any transfer of funds from the Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees but may provide for payment of 100% of expenses.

- (1) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.
- (2) A copy of the Notice of Draw shall be served upon the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

Comment

Rule amended to require disclosure of terms of employment in the application. Rule applies in all chapters, so subparagraphs specific to Chapter 11 cases reorganized.

**B-3001-1. PROOF OF CLAIM**

~~(e) Summary in Lieu of Supporting Documents~~

~~When supporting documentation is voluminous, a claimant may attach a summary to the proof of claim. However, the claimant shall make all documents available to the Debtor, trustee or UST upon request.~~

Comments

Changes to the proof of claim form, and the accompanying instructions, effective December 1<sup>st</sup>, 2011, make clear that a summary cannot be used instead of the original supporting documents.

## **B-3007-1. OBJECTIONS TO CLAIMS: NOTICE**

### (a) Notice

Notice of an objection to claim shall be served by the movant on the claimant(s) to whom the objection is directed in accordance with Fed.R.Bankr.P. 9014(b) and 7004, the Debtor, any trustee, and the UST. The notice shall allow thirty (30) days from the date of service for parties to file a response to the objection.

### (b) Filing; Certificate of Service

The moving party shall file a copy of the notice and a certificate of service listing the name and address of each entity served and the date and manner of service. The objection, notice, and certificate of service may be combined into one document. A sample of a combined objection, notice, and certificate of service is available on the Court's website. If no proper response to the objection is filed, the Court may sustain the objection without further notice or hearing.

### Comments

This new rule shifts responsibility for giving notice of an objection to claim to the party objecting. The Clerk will no longer issue that notice. Delegation of this duty is not prohibited by Fed.R.Bankr.P. 3007.

## **B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY**

### (a) Relief from Stay or Co-debtor Stay

#### (2) Notice; Disposition

##### (A) Chapters 7, 12, and 13

In cases pending under any chapter except Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. ~~B-2002-1(b)~~ **B-2002-1(c)**. If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. The notice shall allow fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of

service listing the name and address of each entity served and the date and manner of service. A sample notice is available at the Court's website. If no proper response to the motion is filed the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

#### Comments

June 2011 amendments changed subparagraph numbering in S.D.Ind. B-2002-1, and reference in this rule was not updated.